IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LUIS RAMIREZ AND	§	
SANTIAGO MARTINEZ	§	
	§	
VS.	§	Civil Action No. ____________
	§	
UNITED STATES OF AMERICA,	§	
Tom Vilsack (or his successor) as	§	
SECRETARY OF AGRICULTURE,	§	
Kevin Shea (or his successor) as	§	
ADMINISTRATOR OF THE ANIMAL AND	§	
PLANT HEALTH INSPECTION SERVICE	§	
OF THE U.S.D.A	§	

PLAINTIFF'S' ORIGINAL COMPLAINT

To the Honorable United States District Judge:

Come now LUIS RAMIREZ and SANTIAGO MARTINEZ, Plaintiffs, complaining of the United States of America and the United States Department of Agriculture, collectively the Defendants herein, and by way of cause of action would respectfully show unto the court the following:

I.

PARTIES

1. Plaintiff, Luis Ramirez, is an individual residing in Laguna Vista, Cameron County, Texas and Plaintiff, Santiago Martinez, is an individual residing in Los Fresnos, Cameron County, Texas

1.2.1 Defendant, the United States of America, maybe served with process in compliance with the Federal Rules of Civil Procedure 4(I) by serving a copy of the summons and complaint, by certified mail, return receipt requested to:

(a) the United States Attorney for the Southern District of Texas, Kenneth Magidson, at the following address U.S. Attorney's Office, Southern District of Texas, 1000 Louisiana, Ste. 2300, Houston, Texas 77002; and

(b) the United States Atty. Gen., Department of Justice, 950 Pennsylvania Ave., N.W., Room-324, Washington DC 20530.

1.2.2 The Secretary of Agriculture is sued in his official capacity, and may be served with service of process by serving his General Counsel at his business address, 1400 Independence Ave., SW, Washington, DC 20250. Defendant Vilsack is referred to herein as "the Secretary."

1.2.3 The Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, is sued in his official capacity, and may be served with service of process by serving his General Counsel at his business address, 1400 Independence Ave., SW, Washington, DC 20250.

II.

JURISDICTION AND VENUE

2.1 Plaintiff brings this lawsuit under the Federal Tort Claims Act, 28 U.S.C. Sections 1346 (b), 2671-2680 and 39 U.S.C. Section 409(c), which vests exclusive subject matter jurisdiction of Federal tort claims litigation in the Federal District Court.

2.2 Venue is proper in the Southern District of Texas, Brownsville Division A civil action against an officer or employee of an agency of the United States acting in his official capacity may be brought in any judicial district in which the plaintiffs reside, and is considered proper venue. *See* 28 USC § 1391(e). Plaintiffs are residents of this judicial district (i.e., U.S. District Court, Southern District of Texas, Brownsville Division), and a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this District.

III.

CONDITIONS PRECEDENT

3.1 All conditions precedent have been performed or have occurred.

3.2 Plaintiffs timely presented their claim in writing to the United States on or about August 22, 2016. No definitive written notice of denial or acceptance has been received from the United States. This suit is filed after the passage of six months from the presentation of Plaintiff's claim.

IV.

FACTS

4.1 At all times relevant to this lawsuit, plaintiff was engaged in, among other things, the raising of cattle and horses in Cameron County Texas. The purpose of the endeavor was to raise cattle and horses for sale at profit.

4.2 The Texas Cattle Fever Tick Eradication Program is a cooperative effort between the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) and the Texas Animal Health Commission ("TAHC"), each acting in cooperation with the other, but substantial federal funding of the TAHC program is by USDA.

4.3 The Fever Tick Eradication Program was established to eliminate bovine babesiosis, a severe and often fatal cattle disease, from the U.S. cattle population. Cattle fever ticks *Rhipicephalus* (*Boophilus*) *annulatus*, and southern cattle ticks (*R.* (*B.*) *microplus*) (collectively referred to as "cattle fever ticks") carry protozoan parasites that cause babesiosis. The disease and the cattle fever ticks were officially eradicated from the continental United States in 1943, with the exception of a permanent tick quarantine zone extending more than 500 miles along the Rio Grande from Del Rio to Brownsville, Texas.

4.4 Efforts to control cattle fever ticks along the permanent tick quarantine zone include vigilant surveillance and inspection for tick-infested cattle and wildlife, Co-Ral® 42% Coumaphos Flowable Insecticide acaricide dip or spray treatment of livestock (primarily cattle and horses), and pasture vacation (temporary removal of cattle from infected pastures) to help protect cattle from potential exposure to the pathogen that can be transmitted by cattle fever ticks.

4.5 Defendant's personnel have alleged that cattle infected fever tick outbreaks have occurred outside the permanent tick quarantine zone in four of the eight Texas counties through which the zone passes: Maverick, Starr, Webb, and Zapata, and including within Cameron County, Texas, and have quarantined Plaintiffs' properties.

4.6 During the course of conducting his livestock operations, Plaintiffs were required to submit their livestock to a tick eradication program which involved, among other things, the periodic dipping of the livestock every seven days. Defendant USA, by and through its agents and employees from the USDA in the Animal and Plant Health Inspection Service ("APHIS"), and together with agents and employees of the Texas Animal Health Commission ("TAHC"), contacted Plaintiffs and demanded that Plaintiffs present their cattle for inspection by Defendant USDA/APHIS and TAHC for fever ticks.

4.7 Subsequent to inspection activities, Plaintiffs were required by Defendants to have their cattle ssprayed with Co-Ral® 42% Coumaphos Flowable Insecticide prior to issuing them a certificate permitting the proposed sale. The livestock were therefore required to be periodically sprayed by United States Department of Agriculture employees and other personnel contracted by the United States of America to participate in the implementation and operation of the tick eradication program. Furthermore, the livestock were required to be sprayed with chemical solutions mandated by such United States Department of Agriculture employees and other personnel contracted by the United States of America.

4.8 Plaintiffs requested that the livestock be hand sprayed with Co-Ral® 42% Coumaphos Insecticide but Defendants' agents and employees, improperly requiring Plaintiffs to spray their cattle by use of a spray box, which causes ingestion and inhalation, which is contrary to the EPA approved label, before a sale would be permitted. The cattle cannot be sprayed without ingesting some quantity of Co-Ral® 42% Coumaphos Flowable Insecticide nor can they survive the spray box without some inhalation of Co-Ral® 42% Coumaphos Flowable Insecticide into their lungs. The manufacturer's application standards provides that cattle of less than three months of age cannot be subjected to an applivcation of Co-Ral® 42% Coumaphos Flowable Insecticide. Furthermore, cattle of any age should not be ssubjected to the application of Co-Ral® 42% Coumaphos Flowable Insecticide more than once every six months. In the case of Plaintiffs, the Defendants employees, agents and reporesentatives required tha the cattle be diped with Co-Ral® 42% Coumaphos Flowable Insecticide every six months.

4.09 Because of both ingestation and inhalation of Co-Ral® 42% Coumaphos Flowable Insecticide used in the spraying process, several of Plaintiffs' cattle died, causing Plaintiffs monetary injuries. Defendants refused to provide documentation of results of inspection of the sampling for infected ticks or of the blood of the cattle.

4.10 Defendants employees injured Plaintiffs by enforcing a non-existent law requiring the application of Co-Ral® 42% Coumaphos Flowable Insecticide every seven days, the refusal to allow Plaintiffs to ship any of their cattle for sale despite their having complied with the wrongful requirement of spraying every seven days, thus subjecting Plaintiffs' cattle to injuries or killing some of Plaintiffs' cattle.

4.11 This claim is made by Plaintiffs against the United States of America because the damages were proximately caused by the negligence, wrongful acts and/or omissions of USDA Employees (including USA contractors, if any), as vicariously liable for the negligent acts or omissions of its employees and contractors under the doctrine of respondeat superior, who were under standards of care but failed and/or refused to meet such standards of care, thus causing damages to Plaintiffs.

4.12 The basis of Plaintiffs' claims arises out of the failure of USDA Employees who were under a standard of care but failed and/or refused to meet such standard of care and failed to act as an ordinary prudent person by causing Plaintiffs' cattle to be herded into small corrals for extended periods under threat of criminal prosecution, and denying their access to natural grass and water, thus causing damages to Claimants.

4.13 The basis of Plaintiffs' claim arises out of the failure of USDA Employees who were under a standard of care but failed and/or refused to meet such standard of care and failed to act as an ordinary prudent person by failing to use due care in the multiple (and all too frequent) application of solutions of *coumaphos*, an acute oral poisonous hazard to Plaintiffs' cattle, which can be fatal both if swallowed and if inhaled, thus causing damages to Plaintiffs.

4.14 USDA's Employees were under a standard of care but failed and/or refused to meet such standard of care and failed to act as an ordinary prudent person by failing to use due care by applying solutions of *coumaphos* to the skin of Plaintiffs' cattle by spraying Plaintiff's cattle with the poisonous *coumaphos* chemical solution using a completely enclosed and unvented spray dip machine, thus causing damages to Plaintiffs.

4.15 USDA's Employees were under a standard of care but failed and/or refused to meet such standard of care and failed to act as an ordinary prudent person by failing to use due care by ignoring the health of Plaintiff's cattle, when it was obvious that Plaintiffs' cattle were weak, very ill, and incapable of eating to maintain their nourishment, and continuing to apply the poisonous *coumaphos* by dipping and enclosed spraying to Plaintiffs' cattle, thus causing damages to Plaintiffs.

4.16 USDA's Employees were under a standard of care but failed and/or refused to meet such standard of care and failed to act as an ordinary prudent person (i) by failing to keep a proper lookout regarding the good health of Plaintiffs' cattle, (ii) by failing to properly and timely apply the poisonous *coumaphos* solution to Plaintiffs' cattle, (iii) by failing to stop the application of the poisonous *coumaphos* solution when the health of Plaintiffs' cattle became endangered, (iv) by failing to take evasive action to avoid serious illness and deaths of Plaintiffs' cattle by poisonous *coumaphos* solution, (v) by disregarding the compromised health of Plaintiffs' cattle by the continuous applications of poisonous *coumaphos* solution, (vi) by failing to implement the plan of care based upon the actual and potential serious illnesses and deaths of Plaintiffs' cattle by poisonous *coumaphos* solution, by failing to implement preventative measures to abate the poisoning of Plaintiffs' cattle by poisonous *coumaphos* solution, (vii) by failing to implement preventative measures to abate the poisoning of Plaintiffs' cattle by poisonous *coumaphos* solution, (viii) by placing Plaintiffs' cattle in positions of peril due to the multiple applications of poisonous *coumaphos* solution to Plaintiffs' cattle, and (ix) by using dipping vats which did not comply with federal law while dipping Plaintiffs' cattle, thus causing damages to Plaintiffs.

V.

DAMAGES

5.1 Plaintiffs seek to recover their actual and compensatory damages, including all damages available under federal statute and common law and equity, and also include post judgment interest as ordered by the court pursuant to certain circumstances as set out by federal law.

5.2 Included in the losses suffered by Plaintiffs are the loss (the death) of livestock, the reduction in the sales weight of livestock, the reduction in fertility of their cattle, the loss of normal productivity and weight gain of their cattle, the costs of complying with the wrongful mandates imposed by Defendants representatives, the cost of burying the cattle.

5.3 Another portion of Plaintiffs' damages include the forced exclusion of Plaintiff's right to the use and enjoyment of land legally leased by him, the cost of maintaining an unproductive lease for future use, the expenses attributable to the forced use of animal hay and feed, the forced clearing and fencing for corrals and the payment of contract labor involved with herding, feeding, and watering Plaintiffs' cattle, expenses related to employment of cowboys to perform work for extended periods of time, purchase of rental equipment related to work with Plaintiffs' animals, purchase of medicine related to the treatment of cattle and other animals.

5.4 The total damages suffered by Plaintiffs fall within the jurisdictional limits of this court, but do not exceed $226,470.00 and such damages shall be determined by the court.

5.5 Further, Plaintiffs also plead for payment of their attorney fees and costs pursuant to 28 U.S.C. §2678 in the amount of 25 per cent of any judgment rendered pursuant to 28 U.S.C. §1346(b) or any settlement made pursuant to 28 U.S.C. §2677, or the amount of 20 per cent of any award, compromise, or settlement made pursuant to 28 U.S.C. §2672, or any amount otherwise authorized pursuant to federal law. Plaintiffs offer to compromise and settle his Claim pursuant to either 28 U.S.C. §2677 or 28 U.S.C. §2672.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer, and that upon trial of this case that Plaintiffs be granted judgment against the Defendants for all damages proximately caused such Defendants as a result of their actions as described herein, reasonable attorney's fees as allowed by law, pre- and post judgment interest, costs of suit and such other and further relief, both at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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